

REMARKS

This application pertains to novel solid lipid particles of bioactive agents and methods for the manufacture and use thereof.

Claims 1-40, 42, 44 and 45 are pending.

Claims 1-15 and 37-39 have withdrawn from consideration as drawn to non-elected subject-matter, so that the claims under consideration are claims 16 - 36, 40, 42, 44 and 45.

Reconsideration and withdrawal of the restriction requirement is respectfully requested for the reasons already stated in the response to the restriction requirement.

In case the Examiner still does not find it possible to withdraw the restriction requirement, it is respectfully requested that the non-elected subject matter be rejoined with the elected subject matter upon allowance of claims drawn to elected subject matter.

Claims 16-36, 40, 42 and 44-45 stand rejected under 35 U.S.C. 103(a) as obvious over Irvin (US 7,276,184) in view of Westesen et al. (US 5,885,486).

The Irvin reference has a filing date of July 11, 2002 and the Westesen reference has a filing date of December 2, 1996.

The accompanying declaration under Rule 131 (with annexed exhibits) establish that Applicants' invention was made prior to July 11, 2002 and that Applicants continued to diligently pursue the invention and the filing of a patent application from the date of conception through

the date their priority application was filed, on October 18, 2002.

Applicants' invention was therefore completed prior to the effective date of Irvin (US 7,276,184), and Irvin is not an effective reference against the present claims.

In the Office Action of June 7, 2010, the Examiner indicated that the Rule 131 Declaration filed 03/16/10 was ineffective to overcome the rejections because Applicants did not provide exhibits in support of the declaration. The Rule 131 Declaration being submitted herewith is accompanied by evidence in the form of exhibits A-F, which support the statements made in the Declaration. The accompanying Declaration (executed in counterparts) is therefore believed to be effective in overcoming the rejections.

The rejection of claims 16-36, 40, 42 and 44-45 16-36, 40, 42 and 44-45 under 35 U.S.C. 103(a) as obvious over Irvin (US 7,276,184) in view of Westesen et al. (US 5,885,486) should therefore now be withdrawn.

Claim 42 stands rejected under 35 U.S.C. 103(a) as obvious over Irvin (US 7,276,184) in view of Westesen et al. (US 5,885,486) and further in view of Rochling et al. (US 6,602,823). As discussed above, however, the Irvin reference is not effective against the present claims, and the rejection of claim 42 under 35 U.S.C. 103(a) as obvious over Irvin (US 7,276,184) in view of Westesen et al. (US 5,885,486) and further in view of Rochling et al. (US 6,602,823) should therefore now be withdrawn.

In view of the present amendments and remarks it is believed that claims 1-40, 42, 44 and 45 are now in condition for allowance. Reconsideration of said claims by the Examiner is respectfully requested and the allowance thereof is courteously solicited.

In view of the present amendments and remarks it is believed that claims 1, 5-8 and 10-12 are now in condition for allowance. Reconsideration of said claims by the Examiner is respectfully requested and the allowance thereof is courteously solicited. Should the Examiner not deem the present Declaration and remarks to place the instant claims in condition for allowance, it is respectfully requested that this Response Under Rule 116 and the accompanying Declaration be entered for the purpose of placing the prosecution record in better condition for appeal.

CONDITIONAL PETITION FOR EXTENSION OF TIME

If any extension of time for this response is required, Appellants request that this be considered a petition therefor. Please charge the required petition fee to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fee or credit any excess to Deposit Account No. 14-1263.

Respectfully submitted,
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